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UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In Re:) Chapter 11
)
) Case Nos. 98-12547 through
BCE WEST, L.P., et al.,) 98-12570-ECF-CGC
)
Debtors.) Jointly Administered
)
EID: 38-3196719) **OBJECTION TO MOTION FOR**
) **RELIEF FROM AUTOMATIC STAY**
) **FILED BY THOMAS J. CONWAY [DE**
) **1002]**
)
)

BCE West, L.P., Boston Chicken, Inc., Mayfair Partners, L.P., BC Great Lakes, L.L.C.,
BC GoldenGate, L.L.C., B.C.B.M. Southwest, L.P., BC Boston, L.P., BC Superior, L.L.C., BC
Heartland, L.L.C., BC Tri-States, L.L.C., Finest Foodservice, L.L.C., BC New York, L.L.C.,
R&A Food Services, L.P., P&L Food Services, L.L.C., Mid-Atlantic Restaurant Systems, Inc.,
BCI Massachusetts, Inc., BCI Southwest, Inc., BC Real Estate Investments, Inc., BCI Mayfair,
Inc., Progressive Food Concepts, Inc., BCI R&A, Inc., BCI West, Inc., BCI Acquisition Sub,

1 L.L.C., and Buffalo P&L Food Services, Inc., debtors and debtors in possession (the "Debtors")
2 file this Objection to the Motion for Relief from Automatic Stay filed by Thomas J. Conway. In
3 support of this Objection, Debtors state as follows:

4 1. On October 5, 1998 (the "Petition Date"), the Debtors filed voluntary petitions for
5 relief under Chapter 11, Title 11 of the United States Code (the "Bankruptcy Code"), in the
6 United States Bankruptcy Court for the District of Arizona (the "Court").
7

8 2. By the provisions of 11 U.S.C. § 362, all persons are enjoined and stayed from
9 commencing or continuing any suit asserting prepetition claims against the Debtors.

10 3. On or about July 2, 1999, Thomas J. Conway ("Movant") filed a Motion for Relief
11 from Automatic Stay [DE 1002] (the "Motion").
12

13 4. Movant's motion seeks an order from the Court lifting the automatic stay to
14 pursue a state court litigation for damages not covered by liability insurance.

15 5. Debtors oppose the Motion because Movant has not provided sufficient cause for
16 the relief from the automatic stay.

17 6. The purpose of the automatic stay is "to ensure orderly administration of the
18 debtor's estate to protect the creditors' right to equality of distribution [citations omitted]; to
19 provide a breathing spell for the debtor [citations omitted]; and to maintain the status quo."
20 *Morgan Guaranty Trust Co. Of N.Y. v. American S & L Ass'n*, 804 F.2d 1487, 1491 (9th Cir.
21 1986). Movant seeks relief that is contrary to all of those purposes since he seeks to have his
22 claim liquidated ahead of those of other creditors and in a forum of their choosing.
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1 7. With respect to the Movant's claims against the Debtors, unlike every other
2 plaintiff who has sought relief from the stay to litigate and liquidate a claim in another forum,
3 Movants are not seeking recovery within available insurance coverage since Debtors do not have
4 insurance coverage for the asserted claims. Rather than maintaining equality of distribution
5 among creditors, Movants' motion seeks a greater benefit than other creditors similarly situated.
6

7 8. This Court has held that it "must make the following determinations in deciding
8 [whether] case exists to modify the stay:

- 9 1) Whether the litigation causes debtor great prejudice. [citation omitted]
- 10 2) Whether a balancing of the respective hardships tips in favor of the debtor
11 or the creditor, resulting from denial or granting of relief.
- 12 3) Whether public policy supports the type or kind of action the Movant is
13 bring against the Debtor."
14

15 *In re America West Airline*, 148 B.R. 920, 923 (Bankr. D. Az. 1993). Movants have failed to
16 satisfy any of those criteria, and cannot satisfy them.

17 9. The Debtors will suffer prejudice by being forced to defend themselves in New
18 Jersey, exposed to no insurance coverage, and subject to the timing demands of plaintiffs and
19 nonbankruptcy courts. But Movant would hardly be harmed by maintenance of the stay. Movant
20 has not demonstrated cause as to why he should be treated any differently than any other
21 unsecured creditor asserting a disputed claim.
22

23 10. This case is not ready for trial. The Ninth Circuit affirmed modification of the
24 stay to permit litigation to proceed in another forum by relying heavily on the fact that the case
25
26

1 was within two weeks of trial when the bankruptcy was filed, and the trial had already been
2 continued four times. *In re Universal Life Church, Inc.*, 127 B.R. 453, 454 (E.D. Cal. 1991),
3 *aff'd*, 965 F.2d 777 (9th Cir. 1992)(affirming for the reasons stated below.) At minimum, this
4 motion for stay relief is very premature.

5
6 11. Based upon the foregoing, the Debtors object to the relief requested and requests
7 that this Court dismiss the Motion, or, alternatively, deny the relief requested in the Motion.

8 Respectfully submitted this 16th day of July, 1999.

9 DEBTORS AND DEBTORS IN POSSESSION

10
11 By: /s/ H. Rey Stroube, III
12 One of their Attorneys

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 16, 1999 the foregoing document was served by E-mail or first class United States Mail, postage prepaid, on all parties on the Master Service List #10 dated June 22, 1999, and to the following party of interest:

J. Lawrence McCormley
Tiffany & Bosco, P.A.
1850 North Central Avenue
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_____/s/ Laura DeWitt